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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG KYLE NELSON,

Defendant and Appellant.

F070959

(Super. Ct. No. 1476753)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Linda A. McFadden, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Craig S. Meyers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J. and Peña, J.

Defendant Craig Kyle Nelson was convicted by no contest plea to felony driving under the influence with a prior felony violation (Veh. Code, §§ 23152, subd. (a), 23550.5). He admitted having suffered a prior vehicular manslaughter conviction within 10 years (Pen. Code, § 191.5, subd. (a); Veh. Code, § 23550.5, subd. (b)); having suffered a prior serious felony conviction (Pen. Code, § 667, subd. (a)(1)); and having served a prior prison term (Pen. Code, § 667.5, subd. (b)). The trial court sentenced him to a total of seven years in prison and imposed fines and fees, including a “\$1,600 general fine.” On appeal, defendant contends (1) the abstract of judgment should be corrected to reflect the applicable subdivision of Vehicle Code section 23550.5, and (2) the trial court erred in imposing the \$1,600 fine. The People concede. We modify the judgment and affirm in all other respects.

DISCUSSION¹

I. Correction of Abstract of Judgment

The parties agree that the abstract of judgment should be modified to reflect the specific subdivision of Vehicle Code section 23550.5 of which defendant was convicted. We concur that defendant’s prior conviction of Penal Code section 191.5, subdivision (a) places him within *subdivision (b)* of Vehicle Code section 23550.5.² We will order the abstract modified.

II. Unauthorized Fine

The parties also agree that the trial court imposed an unauthorized \$1,600 fine. The trial court imposed the fine as a “general fine.” The abstract of judgment, however, reflects a \$1,600 fine imposed pursuant to Vehicle Code section 23550. The applicable

¹ The facts of the offense are irrelevant to the issues on appeal.

² Vehicle Code section 23550.5, subdivision (b) provides: “Each person who, having previously been convicted of a violation of subdivision (a) of Section 191.5 of the Penal Code, a felony violation of subdivision (b) of Section 191.5, or a violation of subdivision (a) of Section 192.5 of the Penal Code, is subsequently convicted of a violation of [Vehicle Code] Section 23152 or 23153 is guilty of a public offense”

statute, Vehicle Code section 23550.5, subdivision (b), provides for a mandatory “fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000).”³ Thus, the maximum fine authorized by the applicable statute is \$1,000, not \$1,600. (Veh. Code, § 23550.5, subd. (b).) Because the \$1,600 fine is unauthorized, we will correct the fine to the maximum authorized fine of \$1,000 (Pen. Code, § 1260 [appellate court may modify judgment]).

DISPOSITION

The judgment is modified to reduce the \$1,600 fine to \$1,000. The trial court is directed to amend the abstract of judgment to reflect (1) the statutes violated in count 1 as Vehicle Code sections 23152, subdivision (a) and 23550.5, *subdivision (b)* (rather than 23550.5), and (2) a \$1,000 fine imposed pursuant to Vehicle Code section 23550.5, subdivision (b) (rather than a \$1,600 fine imposed pursuant to Vehicle Code section 23550). The court is directed to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

³ The parties agree that because the applicable statute specifies a mandatory fine, the catch-all fine provision of Penal Code section 672 does not apply. (*People v. Allen* (2001) 88 Cal.App.4th 986, 999 [Pen. Code, § 672 fine provision applies when no other fine is prescribed for the offense].)